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RECORDATION NO. .... Filed & Recorded

JUL 18 1975-9 15 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of June 1, 1975, between GENERAL ELECTRIC COMPANY (hereinafter called the Builder), and FEDERAL FINANCING BANK, an instrumentality of the United States of America, its successors and assigns (hereinafter called Federal Financing Bank).

WHEREAS, the Builder and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of June 1, 1975 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Conditional Sale Agreement;

WHEREAS, a Participation Agreement dated as of June 1, 1975 ("the Participation Agreement"), has been entered into between the Railroad, the Trustee, Seattle-First National Bank, a national banking association, The Fifth Third Leasing Company, an Ohio corporation, and Union Trust Company of the District of Columbia, a company organized under the laws of the District of Columbia, and Federal Financing Bank, an instrumentality of the United States of America, regarding participation in the financing of

the above purchase, and of the terms and conditions of which the parties to this Agreement and Assignment have knowledge;

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment);

W I T N E S S E T H:

That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Federal Financing Bank to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1: The Builder hereby assigns, transfers and sets over unto Federal Financing Bank, its successors and assigns:

a. All the right, title and interest of the Builder in and to each Unit of the Equipment when and as severally delivered to and accepted by the Railroad under the Conditional Sale Agreement, subject to payment by the Federal Financing Bank to the Builder of the amount required to be paid under Section 4 hereof with respect thereto;

b. All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right

to construct and deliver the Equipment and the right to receive the payments specified in Section 2.3 and in Section 3.1 and in subparagraph (a) of Section 3.3 and the last paragraph of Section 14 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Section 4 thereof) and in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

c. Except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Federal Financing Bank to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to construct and deliver the Equipment

in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Section 13 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Sections 1, 2, 3, 4, 12, 13 and 14, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 14 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Federal Financing Bank, in the name of Federal Financing Bank, or in the name of its nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Federal Financing Bank is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Federal Financing Bank.

SECTION 2: The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement

(including Schedules A and B thereto) and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Federal Financing Bank and the Railroad that at the time of delivery of each Unit of the Equipment under the Conditional Sale Agreement it had legal title to such Unit and good and lawful right to sell such Unit and that title to such Unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such Unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Section 18 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from the Railroad that such filings and recordations have been effected).

SECTION 3: The Builder agrees with the Federal Financing Bank that in any suit, proceeding or action brought by Federal Financing Bank under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Federal Financing Bank from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Federal Financing Bank is conditional upon (a) the Federal Financing Bank's timely motion or other appropriate action, on the basis of Section 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Federal Financing Bank's prompt notification to

the Builder of the asserted defense, setoff, counterclaim or recoupment and the Federal Financing Bank's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Schedule B to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Federal Financing Bank from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Federal Financing Bank or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Federal Financing Bank will give prompt notice to the Builder of any such liability or claim actually known to the Federal Financing Bank and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the

Conditional Sale Agreement or otherwise, not hereby assigned to the Federal Financing Bank, shall not be secured by any lien, charge or security interest upon the Equipment or any Unit thereof.

SECTION 4: The Federal Financing Bank, on each Closing Date fixed as provided in Section 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Section 3) of the Equipment and subject to satisfaction or fulfillment of all conditions provided in the Participation Agreement, including, without limitation, all the conditions of Section 4 thereof, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Section 3, is payable in installments, provided that there shall have been delivered to the Federal Financing Bank, as provided in Section 14 of the Conditional Sale Agreement, at least three business days (as defined in said Section 3) prior to such Closing Date, (or prior to the first such Closing Date only in the case of the opinions of counsel required under paragraphs d, e and h of this Section) the following documents, in form and substance reasonably satisfactory to it and in such number of counterparts as may be reasonably requested by it:

- a. A bill of sale from the Builder to the Federal Financing Bank and to the Railroad transferring to the



Federal Financing Bank a security interest in and to the Railroad legal title to (subject to the security interest of the Federal Financing Bank) the Units of the Equipment in such Group, warranting to the Federal Financing Bank and to the Railroad that at the time of delivery of such Units under the Conditional Sale Agreement the Builder had legal title to such Units and good and lawful right to sell such Units and that title to such Units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such Units against the demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Builder under the Conditional Sale Agreement;

b. A Certificate or Certificates of Acceptance with respect to the Units of the Equipment in such Group as contemplated by Section 2 of the Conditional Sale Agreement;

c. An invoice of the Builder for the Units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such Units;

d. A favorable opinion of counsel for the Railroad, as to the due authorization, execution and delivery of the Conditional Sale Agreement by the Railroad and as to the enforceability thereof under the laws of the District of Columbia, and (1) setting forth that (i) no approval of the Interstate Commerce Commission is necessary for the valid execution and delivery by the Railroad of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, (ii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Federal Financing Bank in any state of the United States of America or in the District of Columbia, and (2) stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its properties and to carry on its business as now conducted;

e. A favorable opinion of General Counsel of the Department of Transportation, in form and substance satisfactory to the Federal Financing Bank, to the effect that the payment of the Conditional Sale Indebtedness (as defined

in the Conditional Sale Agreement) and interest thereon by the Railroad has been duly guaranteed by the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation (hereinafter called the Administrator) pursuant to the Guaranty Agreement (hereinafter called the Government Guaranty), among the Administrator, Seattle-First National Bank, a national banking association, as Trustee, and the Federal Financing Bank under the provisions of the Rail Passenger Service Act, as amended, and the Government Guaranty and the guaranty of the Administrator endorsed on this Assignment have been duly executed and delivered and constitute valid, binding and enforceable general obligations of the United States of America backed by the full faith and credit of the Government of the United States, and stating that all necessary approvals of the Secretary of the Treasury have been obtained;

f. A receipt from the Builder for any payment (other than the payment being made by the Federal Financing Bank pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Federal Financing Bank with funds furnished to it for that purpose by the Railroad;

g. A duly executed copy of the Government Guaranty;  
and

h. A favorable opinion of Canadian counsel for the Railroad, prior to the first Closing Date, to the effect that the Conditional Sale Agreement and this Assignment have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor) and that no other filing or recordation is necessary for the protection of the rights of the Federal Financing Bank under such documents in Canada or in any province or territory thereof.

In giving the opinions specified herein, counsel may qualify any opinion by general reference to limitations as to enforceability as imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Each such legal opinion shall contain an undertaking promptly to notify the Federal Financing Bank, Trustee and its special counsel if, prior to the last Closing Date or December 31, 1975, whichever first occurs, the author of such opinion becomes aware of any changes in law or the interpretation thereof since the date of such opinion which would render such opinion incorrect in any material respect.

The Federal Financing Bank shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Section 15 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Federal Financing Bank shall not make any such payment, the Federal Financing Bank shall reassign to the Builder, without recourse to the Federal Financing Bank, all right, title and interest of the Federal Financing Bank in and to the Units of the Equipment with respect to which payment has not been made by the Federal Financing Bank.

SECTION 5: The Federal Financing Bank may assign all, but not less than all, of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder subject to the provisions of Section 23 of the Conditional Sale Agreement. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Federal Financing Bank hereunder.

SECTION 6: The Builder hereby:

(a) represents and warrants to the Federal Financing Bank, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Federal Financing Bank or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Federal Financing Bank or intended so to be; and

(c) agrees that, upon request of the Federal Financing Bank, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; provided, however, that the parties shall be entitled to all rights conferred as provided in Section 21 of the Conditional Sale Agreement. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 8. This Assignment may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. The Federal Financing Bank agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Builder and the Federal Financing

Bank have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested.

GENERAL ELECTRIC COMPANY

[CORPORATE SEAL]

Attest:

*J. T. High*  
Attesting Secretary

By

*C. B. Snyder*  
~~Authorized Officer~~  
Manager Marketing  
Locomotive Products Department

FEDERAL FINANCING BANK

[CORPORATE SEAL]

Attest:

*Robert G. Cook*  
Authorized Officer

By

*R. M. Fink*  
Authorized Officer

GUARANTY BY DEPARTMENT OF TRANSPORTATION

<sup>deputy</sup>  
The Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America does hereby guarantee to the Federal Financing Bank named in the foregoing Agreement and Assignment the prompt payment of the unpaid Conditional Sale Indebtedness and interest thereon under the Conditional Sale Agreement referred to in said Agreement and Assignment pursuant to and in accordance with the Guaranty Agreement dated July 16 1935 among the Deputy Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America, as Guarantor, Seattle-First National Bank, a national banking association, as Trustee, and said Federal Financing Bank.

By

*Asaph H. Hall*  
Deputy Federal Railroad  
Administrator, Guarantor



COMMONWEALTH OF )  
PENNSYLVANIA )  
 ) SS.  
COUNTY OF ERIE )

On this 1st day of July, 1975, before me personally appeared C.S. Bressler, to me personally known, who being by me duly sworn, says that he is a Manager-Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret M. Frew  
NOTARY PUBLIC  
MARGARET M. FREW, Notary Public  
Erie, Erie Co., Pa.  
My Commission Expires June 7, 1976

My Commission Expires: \_\_\_\_\_

CITY OF WASHINGTON )  
 ) SS.  
DISTRICT OF COLUMBIA)

On this 8th day of July, 1975 before me personally appeared Robert M. Forbes, to me personally known, who, being by me duly sworn, says that he is a Vice President of Federal Financing Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Quincy P. Russell  
NOTARY PUBLIC

My Commission Expires: 9/30/76

CITY OF WASHINGTON )  
 ) ss.  
DISTRICT OF COLUMBIA)

On this 17th day of JULY 1975, before me personally appeared ASAPH H HALL, to me personally known, who, being by me duly sworn, says that he is the Deputy Federal Railroad Administrator, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportation; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Federal Railroad Administrator.

DEPUTY  
Ray R. R. R.  
NOTARY PUBLIC

My Commission Expires: My Commission Expires April 30, 1977.

#### ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

NATIONAL RAILROAD PASSENGER CORPORATION hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of June 1, 1975.

NATIONAL RAILROAD PASSENGER CORPORATION

BY

Donald A. Brazier  
Authorized Officer